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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,414	09/23/2003	Matthew Brian Hyder	3621.002A	2024
24040	7590	04/29/2005	EXAMINER	
DENNIS G. LAPOINTE LAPOINTE LAW GROUP, PL PO BOX 1294 TARPON SPRINGS, FL 34688-1294			AMERSON, LORI BAKER	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/668,414	HYDER, MATTHEW BRIAN	
	Examiner	Art Unit	
	L. Amerson	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-6 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/20/03</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. The indicated allowability of claims 1 and 3-6 is withdrawn in view of the newly discovered reference(s) to Lin, Voris, Tuttle and Daleabout et al and Rasmussen.

Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 1, 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Voris and Tuttle. Lin discloses a machine having a base (10), a vertical bar member (20) fastened obliquely at one end to the base by an outer (col. 2, line 11-12), an upper rocking bar member (30) having spaced-apart holes (31; col. 2, line 33-35) and pivotally adjustable on the bar member, a lower rocking bar member (40), a connection bar (50) pivoted to the upper and lower rocking bar, a seat pad (60), a back pad (70), a u-shaped handle (80) and a cushioning member comprising an oil-pressure cylinder (90). Lin discloses all of the limitations of the claimed invention except for the elongate bar parallel to the upper rocking member and the connection bar having a holes and a second cushion member. Thus, Voris teaches a linkage (94) or "elongate bar" parallel to the pivot support member (22) or "upper rocking bar" having a plurality of holes. Since the provision of a plurality of spaced-apart through holes is know as a

desirable feature of exercise equipment for adjusting distance between two members, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lin in view of the teaching of Voris such that an additional bar member is capable of adjustably receiving a connection bar for attachment to the rocking member. As to the connection bar, Tuttle teaches a plurality of holes on a connection rod (D). Since the provision of a plurality of spaced-apart through holes is known as a desirable feature of exercise equipment for adjusting distance, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lin in view of the teaching of Tuttle to provide such an adjustment mechanism in the connection member.

Regarding the second cushion member, Lin discloses a cushion member capable of returning the lower member to a stationary position at a moderate pace; therefore, The Applicant should note that duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

b. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lin, Voris and Tuttle as applied to claim 1 above and further in view of Daleabout et al. The references disclose all of the limitations of the claimed invention except for a detachable cross member having a v-shape that connects to the handle. Daleabout teaches a detachable handle (col. 7, lines 19-23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lin in view of the teaching of Daleabout such that a cross

member is detachable to a handle for purposes of providing additional flexibility to an exerciser's routine. Regarding the shape, a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

c. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lin, Voris and Tuttle as applied to claim 1 above and further in view of Rasmussen. The references disclose all of the limitations of the claimed invention except for a detachable cross member having a v-shape that connects to the handle. Rasmussen teaches a connection bar having a spring. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a spring in view of the teaching of Rasmussen such that a spring provides additional resistance between the rocking bars.

3. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. and Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "L. Amerson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

L. Amerson